

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

TED HAMILTON,  
ADC #96375

PLAINTIFF

v.

4:13CV00738-DPM-JTK

CHARLES CONRAD SCHOCK

DEFENDANT

**PROPOSED FINDINGS AND RECOMMENDATIONS**

**INSTRUCTIONS**

The following recommended disposition has been sent to United States District Judge D. P. Marshall Jr. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the hearing before the District

Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court  
Eastern District of Arkansas  
600 West Capitol Avenue, Suite A149  
Little Rock, AR 72201-3325

### **DISPOSITION**

Plaintiff Hamilton, a state inmate incarcerated at the Wrightsville Unit of the Arkansas Department of Correction (ADC), filed this action pursuant to 42 U.S.C. § 1983 against Defendant Schock on December 24, 2013; his Motion to Proceed in forma pauperis was granted by Order dated January 8, 2014 (Doc. Nos. 2, 3). Summons issued to Defendant Schock on January 8, 2014, was returned, unexecuted, on February 21, 2014 (Doc. No. 7). Summons was reissued at an address provided under seal on February 25, 2014, and was returned, unexecuted, on April 15, 2014 (Doc. Nos. 8, 11).

On April 25, 2014, this Court noted Plaintiff’s failure to serve Defendant Schock, and provided him with one final opportunity in which to provide a last-known address within thirty days of the Order (Doc. No. 12). Plaintiff has not responded to that Order.

Rule 4(m) of the Federal Rules of Civil Procedure provides:

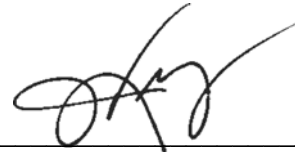
If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time....

This Court’s April 25, 2014 Order (Doc. No. 12) constituted notification to the Plaintiff,

within the meaning of Rule 4, that service should be effected within a specified period of time. Therefore, absent a response from Plaintiff or notice of another last-known address, the Court finds that Plaintiff's Complaint against Defendant Schock should be dismissed, without prejudice, for failure to obtain service. Accordingly,

IT IS, THEREFORE, RECOMMENDED that Plaintiff's Complaint against Defendant Schock be DISMISSED, without prejudice.

IT IS SO RECOMMENDED this 29<sup>th</sup> day of May, 2014.

A handwritten signature in black ink, appearing to read 'J. Kearney', is written above a horizontal line.

JEROME T. KEARNEY  
UNITED STATES MAGISTRATE JUDGE